

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Albert Palomar et al. v. SMC Corporation of America; Case No. 1:19-cv-4693-RLY-MJD

CLASS ACTION NOTICE

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**THIS NOTICE CONTAINS IMPORTANT INFORMATION ABOUT A LAWSUIT TO
RECOVER WAGES DEDUCTED AS “USER FEES”**

PLEASE READ CAREFULLY

1. What is the notice about?

This notice is being sent to you because you are eligible to participate in a lawsuit pending against SMC Corporation of America (“SMC”). The former employees who started this lawsuit claim that they and their SMC coworkers were subjected to unlawful “User Fee” wage deductions. This Notice is sent to tell you about the lawsuit and how it may affect you. This Notice also explains what you need to do if you want to exclude yourself from this class action and how that will affect your legal rights.

2. What are the kinds of claims asserted in the lawsuit?

In this case, Plaintiffs Albert Palomar, Foster Mitchell, Dante Hutton and Matthew Bradburn

(“Plaintiffs”) have asserted class action claims to recover “User Fee” deductions taken from their wages, raising legal claims under the Indiana Wage Payment Statute (“IWPS”), the Indiana Crime Victim’s Statute, I.C. 34-24-3-1, for criminal conversion and theft, under Indiana common law for conversion and unjust enrichment, under the IRS Code (26 USC § 7434) for fraudulent or false reporting on an information return, and, for those who worked for SMC in the State of California, a claim under the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17209.

3. What is a class action claim?

A “class action lawsuit” is a lawsuit in which one or more people represent a large group, or “class” of people. Class actions are brought to resolve similar legal claims of all the members of the group at one time. If you received this Notice, you are automatically included in the class action claims unless you specifically request to be excluded in writing.

4. What are the specific allegations in the lawsuit?

Plaintiffs claim that SMC unlawfully and improperly deducted “User Fees” from employee wages and kept those “User Fees” for itself after representing to employees in writing that the “User Fees” were required by the Internal Revenue Service, after claiming that it was going to report employees’ personal use miles in company cars to the IRS on a W-2 as “taxable income,” and after telling employees that the “User Fee” was being deducted to “offset tax liability,” when the “User Fees” were not used to pay toward any tax liability and no such tax liability actually existed.

5. Why is this notice being sent to you?

SMC’s records indicate that you worked as an employee, that you had one or more “User Fee” deducted from your wages, and that you are eligible to participate in this lawsuit. This means that you are one of the people whose rights could be affected by the lawsuit.

6. How do I join the class action?

You do not have to do anything to join the class action. You are AUTOMATICALLY included in the class action claims, which is why you received this Notice. Additionally, if you worked for SMC in the State of California and had one or more “User Fee” deducted from your wages while working in California, you are automatically included in the California sub-class. If you want to remain included in the class action claims, you do not need to do anything. By doing nothing, you will continue to be part of the class action claims and you will receive additional information regarding the case as it goes on. If, however, you want to be *excluded* from the class action claims, you must write a letter to the Clerk of the Court stating that you wish to exclude yourself from the class action lawsuit. The Clerk of the Court must receive your letter within sixty (60) days after you were mailed this notice. Your letter must be addressed as follows:

Clerk of the Court

**United States District Court
For the Southern District of Indiana
Indianapolis Division
Birch Bayh Federal Building and
United States Courthouse
45 East Ohio Street, Room 105
Indianapolis, Indiana 46204**

7. Has the Court ruled on the Plaintiffs' claims?

No. The Court has not yet ruled on any of Plaintiffs' claims. The fact that this notice is being mailed to you does not mean that the Court has decided whether SMC violated the law.

8. How will this lawsuit affect me?

The Court has given the Plaintiffs permission to represent the following groups of current and former employees:

- a. For claims under the Indiana Wage Payment Statute ("IWPS"), the Indiana Crime Victim's Statute, I.C. 34-24-3-1, for criminal conversion and theft, under Indiana common law for conversion and unjust enrichment, and under the IRS Code (26 USC § 7434) for fraudulent or false reporting on an information return:

"Present and former SMC Corporation of America employees who were subjected to one or more "User Fee" wage deductions at any time from November 26, 2013 to the present."

- b. For claims under the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17209:

"Present and former SMC Corporation of America employees who were assigned to work primarily in the State of California and who were subjected to one or more "User Fee" wage deductions at any time from November 26, 2015 to the present."

If Plaintiffs win the lawsuit, other workers who are in one or more of the classes may share in damages awarded to the Plaintiffs and other class members. If the lawsuit is not successful, other workers who are in either or both classes may be prevented in the future from bringing their own "User Fee" lawsuit against SMC. Thus, if you remain a member of the class action, you will be bound by the judgment whether favorable or unfavorable to the Plaintiffs.

9. Who are the Plaintiffs' lawyers and how will they be paid?

If you choose to join this suit, your interests will be represented by Albert Palomar, Foster Mitchell,

Dante Hutton and Matthew Bradburn through their attorneys as counsel for the class. Counsel for the class is:

Robert P. Kondras, Jr.
Hassler Kondras Miller LLP
100 Cherry Street
Terre Haute, Indiana 47807
(812) 232-9691

Robert J. Hunt
THE LAW OFFICE OF ROBERT J. HUNT, LLC
1905 S. New Market Street, Suite 168
Carmel, Indiana 46032
(317) 743-0614

The attorneys for the employees may be entitled to receive the payment of attorneys' fees and costs in this lawsuit if there is a recovery or judgment in Plaintiffs' favor. If there is no recovery or judgment in Plaintiffs' favor, you will not be responsible for any attorneys' fees. Any payment of attorneys' fees by SMC to Plaintiffs' counsel may be subject to prior Court approval. If there is a recovery, the attorneys for the class may receive a part of any settlement obtained or money judgment entered in favor of all members of the class. By joining this lawsuit, you designate Plaintiffs Albert Palomar, Foster Mitchell, Dante Hutton and Matthew Bradburn as your agents to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the representative Plaintiffs will be binding on you if you remain in this lawsuit.

10. How can I obtain further information about this lawsuit?

If you have questions about this case or need help understanding this notice, you may contact the lawyers representing the Plaintiffs who brought this lawsuit. You may reach Robert P. Kondras, Jr. by calling (812) 232-9691 or by sending an email to kondras@hkmlawfirm.com. You may reach Robert J. Hunt by calling at (317) 743-0614 or by sending an email to rob@indianawagelaw.com.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA. THE FEDERAL DISTRICT COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR OF THE COMPANY'S DEFENSES.

PLEASE DO NOT CALL OR WRITE THE JUDGE ASSIGNED TO THIS MATTER. THE JUDGE CANNOT ANSWER QUESTIONS CONCERNING THIS LAWSUIT OR THIS NOTICE.